IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8845 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAURIBEN M VANZARA

Versus

CHIEF TRANSPORT & COMMERCIAL OFFICER

Appearance:

MS LAXMI NAYNANI FOR MS RANI ADVANI for Petitioners

MR HARDIK C RAWAL for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/08/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner.

#. The petitioner prayed for grant of following reliefs in this special civil application:

(A) Direct the respondents not to cancel the Licences issued to the petitioners, and allot a `Topla space' of 3'x2' to each of the petitioners within 3 days of the orders of this Hon'ble Court;

(B) Direct the respondents not to otherwise harass the petitioners by cancelling their Licences, or otherwise intimidate or threaten them;

(C) Pending hearing and final disposal of the petition permit the petitioners to sit and hawk their goods, in their former places outside Anand ST bus stand;

(D) Pending hearing and final disposal of this special civil application to grant prayers (A) and (B);

(E) That this Hon'ble Court may be pleased to provide costs of this petition.....

#. This matter was admitted and interim relief in terms of para 14(C) has also been granted.

#. It is unfortunate for the petitioners that despite of repeatedly approaching to the court, they could not get final relief from the respondent-Corporation which is a `State' within the meaning of Article 12 of the Constitution of India.

#. The facts of the case are to be briefly stated. The petitioners earlier filed special civil application No.8319 of 1988 and prayed therein for directions to the respondents to grant licence to them on the same terms and conditions as granted to other persons. Many other reliefs have also been prayed. This petition came to be decided by the court on 26th June 1990 in terms that the learned counsel for the petitioner in view of the letter of the Corporation reference of which has been made in the judgment of the court, sought permission for withdrawal of the petition with a request that the respondents-authorities be directed to decide the application filed by petitioners for grant of licences to them within a specified time limit. Accordingly, the petition was dismissed as withdrawn. The court has given directions to the respondents that the applications submitted by petitioners and the reference of which has been made in the letter of the Corporation dated 15th May 1990, be decided by the appropriate authority on or before July 31, 1990. Liberty has been granted to petitioners for revival of the special civil application by filing a mere note. However, those directions of this court were not complied with by the Corporation and the petitioners though could have availed of the liberty granted to them by the court for revival of the special

civil application, thought of filing Misc. Civil Application No.66 of 1990. In the M.C.A., they prayed for clarification of the order of the court passed earlier in special civil application No.8319 of 1988. This M.C.A. was disposed of by the court on 13.2.91. This court has accepted that there is some ambiguity with regard to the nature of licences to be granted by respondent-Corporation to the petitioners. It was clarified that the licences shall be ordered on the same line as the licences issued to the persons named in the order. It has further been made clear that the licence fee of Rs.75/- be charged from the petitioners.

#. It is the grievance of petitioners that the respondents have not complied with these directions of the court on one pretext or another. One of the reasons given is that the petitioners are entitled to Topla space to carry on their trade i.e. space of 3ft.x2ft. on the payment of licence fees of Rs.75/-. However, the petitioners have stated in para-5 of this special civil application that in order to find out an amicable solution and put an end to the matter, they have agreed to pay fee for licence at Rs.75/- and take Topla space, i.e. 3ft.x2ft. The petitioners paid advance fees for six months and Rs.5/- for the form but the respondents have this time taken a pretext that they can be given only hawker's licence, and not Topla space licence. That gives cause to the petitioners to file this special civil application.

#. This court has protected the petitioners, meaning thereby, they were permitted to keep space of size 3ft.x2ft. and to sit and hawk in their former places outside Anand bus stand till further orders. This interim relief granted by this court continues till date.

#. The learned counsel for the respondents fairly submitted that in view of this order of the court dated 19.12.91, licence stood granted to the petitioners for Topla space, i.e. 3ft.x2ft. but it is not the permanent licence. These licences are subject to renewal by the Corporation for which the petitioners are to file applications and to pay fees of the form etc. It has further been stated that the Corporation revises, after reasonable interval, the licence fees also. Renewal of licence if granted in favour of petitioners, then they have to pay revised licence fees.

#. The learned counsel for the petitioners submit that this court had given directions to the respondents in earlier proceedings to consider the applications of the

petitioners for grant of licences to the petitioners at par with the cases of those persons to whom the licences have been granted. So no such direction is necessary and the court may issue Writ of Mandamus to the Corporation to grants licence to the petitioners.

##. I find the submission made by learned counsel for the respondents just and reasonable. Though at this stage in view of the order which I propose to pass in this petition, it is not necessary to express any final opinion whether these are the permanent licences or not but prima-facie, these appear to be licences for fixed term subject to renewal thereof. The petitioners are doing their trade at the bus station of the Corporation for all these years under the court order and it is a case of licence which certainly at this stage can be accepted to be subject to renewal.

##. In view of aforesaid discussion, this writ petition is disposed of in the terms that the petitioners to file applications for renewal of their licences to the respondents and the authority concerned shall decide these applications in accordance with law and after hearing the petitioners, where personal hearing is desired. This application be filed by petitioners within a period of one month from today and the Corporation shall take decision thereon within a period of two months thereafter. In case where the claim of the petitioners for renewal of licences are not acceptable, a reasoned order may be passed and a copy of the same be sent to the petitioners by registered post A.D.. Liberty is granted to the petitioners for revival of the special civil application in case of difficulty. The special civil application and Rule stand disposed of accordingly. The Corporation is directed to pay Rs.2,000/= as costs of this petition to the petitioners.

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(sunil)